

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.MC.No. 2440 of 2007()

AGAINST THE ORDER IN CRMP 4600(A)/2007 IN
CC.458/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI
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PETITIONER: COMPLAINANT

M.M.ANTONY,S/O. MARTIN,
MOOTHERIL HOUSE,
KUMBALANGHI P.O.,
KOCHI-7.

BY ADV. SRI.K.L.JOSEPH

RESPONDENTS:

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1. FAROOK.S/O. MOOSA, PROPRIETOR,
R.F.EXPORTS, CHANDIROOR,ALAPPUZHA.
 2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 2440 of 2007

Dated this the 30th day of July, 2007

ORDER

The petitioner is the complainant in a prosecution under Section 138 of the N.I. Act. The trial is in progress. The accused appears to have taken up a stand that he has no dealings whatsoever with the complainant. To disprove this, the complainant wanted a copy of his bank account to be produced. That, according to him, would show that there were earlier transactions between the accused and the complainant. When the complainant was in the witness box the complainant filed a petition. One would have expected the complainant to apply to his bank to get the certified copy of his account and get it duly certified under the Bankers Book Evidence Act and then produce the same before the learned Magistrate. Instead of doing that, the petitioner filed an application to direct the bank to produce the certified copy of the ledger relating to his account. The learned Magistrate surprisingly rejected the application holding that the burden of proof under Section 139 of the N.I. Act is on the accused and therefore the document is not relevant at that stage.

2. The learned counsel for the complainant submits that the complainant does not want to leave anything to chance. He wants to

prove that the defence set up by the accused is unacceptable. In these circumstances it should not have been held that the document sought to be produced is irrelevant. The petitioner may be given an opportunity to summon the bank to produce the certified extract, it is submitted.

3. I do not agree that the reasons shown by the learned Magistrate for rejection of the application are valid. It was for the petitioner to have obtained a duly certified extract of his account from his bank under the Bankers Book Evidence Act and produce the same. I am satisfied that the learned Magistrate must now give the petitioner an opportunity to produce such certified extract under the Bankers Book Evidence Act. The learned Magistrate shall give the petitioner reasonable time to produce such certificate to prove the same and thereafter only proceed to dispose of the case. The petitioner must produce such document before the learned Magistrate at the earliest - at any rate, within a period of 15 days from this date.

4. This Crl.M.C. is accordingly dismissed with the above observations.

CrI.M.C.No. 2440 of 2007

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(R. BASANT)
Judge